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May 13, 2022

Members of the Senate Environment and Energy Committee  
Statehouse Annex  
P.O. Box 068  
Trenton, N. J. 08625

**RE: S2185 (Directs NPU to develop program to incentivize installation of new energy storage systems.)**

Members of the Senate Environment and Energy Committee:

I write on behalf of the Division of Rate Counsel regarding S2185 (Directs BPU to develop a program to incentivize installation of new energy storage systems), which is up before the committee on May 16, 2022. We have concerns about this bill's impact on ratepayers. I regret that I am unable to attend the meeting, but hope you will consider our comments.

As you are aware, Rate Counsel represents and protects the interests of all utility customers – residential customers, small business customers, small and large industrial customers, schools, libraries, and other institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities seek changes in their rates or services. Rate Counsel also gives consumers a voice in setting energy, water, and telecommunications policy that will affect the rendering of utility services well into the future.

This bill would require the New Jersey Board of Public Utilities (“Board”) to provide subsidies for energy storage systems. Rate Counsel has substantial concerns with this bill. It would impose significant costs on the New Jersey’s electric ratepayers, while impairing the State’s ability to leverage other sources of funding for energy storage. In addition, it encourages the siting of potentially hazardous battery storage facilities in disadvantaged communities.

The bill directs the Board to implement a pilot program, and subsequently a permanent program, to incentivize the installation of energy storage systems in New Jersey. The legislation mandates multiply overlapping layers of incentives for both behind-the-meter storage systems, and “front-of-the-meter” systems located on the utility side of the meter. Both types of systems would be eligible to receive “performance incentives” provided through the State’s electric distribution utilities, and designed to compensate the owner for the “full value” of the services provided by the storage system and to meet other specified objectives. In addition, for behind-

the meter systems the Board could consider allowing the net metered solar installations to have capacities larger than required to meet the owners' annualized electricity usage if such installations are paired with behind-the-meter storage, thus increasing these systems ability to receive subsidies in the form of net metering credits. For front-of-the meter systems, the State's electric distribution utilities would be required to adopt tariffs that provide these facilities with compensation for their value to the grid. Finally, during the pilot program, and potentially beyond, energy storage system owners would receive an "upfront incentive" funded through the societal benefits charge ("SBC") and designed to fill the gap between the available revenue streams and the "all-in system costs" for these facilities.

The amounts of all of these subsidies would be determined administratively by the Board. There are no provisions for the Board to utilize competitive processes to minimize the costs of the energy storage program.

The proposed legislation would impose significant costs on New Jersey's utility ratepayers. Although the total costs of the mandated incentives is not specified in the legislation, the Board would be required to allocate at least \$60 million in SBC funds annually to fund the "upfront" incentives during the pilot phase of the program. To place this amount in context, the approved budget for Fiscal Year 2022 the New Jersey Clean Energy Program and State Energy Initiatives includes an estimated \$344.665 million in SBC collections from ratepayers. The \$60 million required to be allocated the "upfront" energy storage incentives amounts to 17.4 percent of the total collections from ratepayers. Since the other incentives required by the legislation are intended to compensate storage owners for the value they provide to the State's electric and transmission systems, ratepayers in effect would be funding \$60 million in subsidies to pay storage owners in excess of the value they provide. The legislation makes no provision for refunds to ratepayers in the event these facilities receive more revenues than anticipated from other sources.

Further, at least \$20 million of the \$60 million is allocated to "upfront" incentives for "customer classes or deployment scenarios that face greater economic hurdles, including, but not limited to low-to-moderate income customers, customers sited in overburdened communities, and owners of stand-alone energy storage systems who do not qualify for federal investment tax credits." Thus, ratepayers would be paying at least \$20 million in above-value subsidies for systems with the highest costs.

At the same time, the legislation would compromise other potential sources of funding for storage. As noted, the legislation contemplates providing subsidies to projects that do not qualify for federal investment tax credits. This provision would, in effect, require the Board to forego a source of funding that would mitigate the cost of the program for ratepayers.

In addition, the subsidies provided in the legislation could impair the ability of storage system owners to receive revenues from the PJM capacity market. The legislation includes a provision that the Board's program may not prohibit energy storage systems from participating in the wholesale market, and thus appears to contemplate this as a source of revenues for these systems. However, the PJM's Minimum Offer Price Rule ("MOPR") established bidding "floors" for subsidized facilities participating in the PJM capacity market. Storage facilities

receiving subsidies under the proposed legislation would be subject to this rule, which would reduce their ability to successfully bid into the PJM capacity auctions.

Finally, the legislation would incentivize the siting of storage facilities in the State's low- and moderate-income communities. As noted above, the legislation reserves a portion of the funds allocated for "upfront" incentives for facilities located in low- and moderate-income communities, and the legislation also allows the Board to include bonuses in the incentives for such projects. Siting large battery storage facilities in these communities would expose the residents of these already overburdened areas to hazards including fire and releases of toxic gases.<sup>1</sup> This seems contrary to the State's environmental justice goals.

The proposed legislation is problematic for all of the reasons cited above. Moreover, it is unnecessary. The federal Infrastructure Investment and Jobs Act P.L. 117-58, includes funding for energy storage to enhance grid flexibility (Section 40107) and for battery processing and manufacturing (Section 40207). Given the federal initiatives to facilitate the development of cost-effective energy storage, there is no need to increase New Jersey's already high energy costs to achieve this objective.

Thank you for considering our comments. Please let us know if you have any questions. We very much appreciate the opportunity to share our comments on behalf of the State's ratepayers. Please feel free to contact our office if you have any questions. Thank you for your attention to these important matters.

Sincerely,

s/s Brain Lipman,  
Brian O. Lipman, Esq.  
Director, Division of Rate Counsel

- c: Kevil Duhon, Deputy Executive Director at New Jersey Senate Democratic Office
- Matthew Peterson, Democratic Aide Services, Senate Environment and Energy Committee
- Eric Hansen, OLS Committee Aide
- Christina Denney, OLS Committee Aide
- Rebecca Panitch, Republican Aide, Senate Environment and Energy Committee
- Christine Mosier, Chief of Staff, Senator Bob Smith
- Pamela Cocroft, Committee Secretary
- Erin Rice, Chief of Staff, Sen. Codey
- Tina DeSilvio, Chief of Staff, Sen. Durr
- Brian Woods, Chief of Staff, Sen. Stansfield
- Maura Caroselli, Managing Attorney for Gas & Clean Energy, Rate Counsel
- Sarah Steindel, Attorney for Rate Counsel
- David Wand, Managing Attorney for Electric, Rate Counsel

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<sup>1</sup> B. O'Connor, "Battery Energy Storage Hazards and Failure Modes," NJFPA Today (Dec. 3, 2021), available at: <https://www.nfpa.org/News-and-Research/Publications-and-media/Blogs-Landing-Page/NJFPA-Today/Blog-Posts/2021/12/03/Battery-Energy-Storage-Hazards-and-Failure-Modes>.